

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
Consolidated Request for Review of a)	471 Application Number
Decision of the Universal Service)	161029263 (FRN 1699059727) (2016)
Administrator and Petition for Waiver of the)	
Commission's Rules of)	
)	
School District of the City of St. Charles St.)	
Charles, Missouri)	

**CONSOLIDATED REQUEST OF THE SCHOOL DISTRICT OF THE CITY OF ST. CHARLES FOR
REVIEW OF A DECISION OF THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY AND
PETITION FOR WAIVER**

Pursuant to sections 54.719 and 54.722 of the Commission's rules,¹ the School District of the City of St. Charles ("St. Charles or School") hereby respectfully requests that the Wireline Competition Bureau (the "Bureau") review and reverse the Decision on Appeal of the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") dated April 17, 2018 (the "USAC Denial Decision").² In addition, to the extent necessary and pursuant to section 1.3 of the Commission's rules,³ St. Charles requests a waiver of the Commission's competitive bidding rules for the Schools and Libraries Universal Service Support Mechanism ("E-Rate") to cure an inadvertent, alleged failure to properly include on the School District's FCC Form 470 for Funding Year 2013 a complete description of the service for which funding was sought, and to permit St. Charles to correct the erroneous Form 470 Application Number cited in its FCC Form 471 submissions for Funding Year 2016.

¹ 47 C.F.R. § 54.719(b), (c); 47 CFR § 54.722(a).

² See Exhibit 1, USAC Denial Decision.

³ 47 C.F.R. §1.3.

St. Charles requests that the Bureau incorporate into this appeal the entirety of the arguments and exhibits filed in the Consolidated Request of the School District of the City of St. Charles for Review of a Decision of the Universal Administrative Company and Petition for Waiver filed on March 22, 2018 under Confirmation Number 20180323169522375, attached hereto as Attachment 1 and Exhibits A-P and the Affidavit of Kevin Richmiller, Director of Technology.

To the extent that the Commission denies these requests, St. Charles requests that the Bureau direct USAC to initiate joint recovery from Charter Fiberlink – Missouri, LLC (“Charter”), St. Charles’ service provider for the services in question, which shares culpability for the error.

The Request is timely filed. Section 54.720(b) of the Commission’s rules requires the filing of an appeal “within sixty (60) days of issuance” of a decision by USAC. The USAC Denial was dated April 17, 2018.⁴

Respectfully submitted,



Charles Brazeale
Assistant Superintendent for Business
and Technology
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Counsel for City of St. Charles School District

April 25, 2018

⁴ 47 C.F.R. § 54.720(b).

AFFIDAVIT OF KEVIN RICHMILLER

I, KEVIN RICHMILLER, swear:


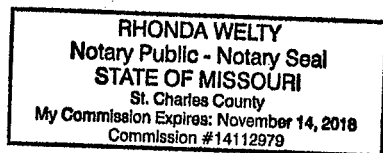
1. that I am the Director of Technology for the St. Charles R-VI School District ("School District") since July 1st, 2012. I have 13 years of experience in the technology field. I am responsible for the School District's network infrastructure and design.
2. that Charter Communications provides our WAN services for the district. At the time of the posting of our FCC Form 470 in FY 2013, Charter was the only company with the infrastructure in place to connect all of our buildings and the only company to bid on our request for services set forth in our FCC Form 470.
3. that all of our school buildings connect back to our Admin Center in a star topology with transport being provided from Charter. From the Admin Center all of our traffic flows through a MOREnet switch out to the Internet. MOREnet is our Internet Service Provider and the School District purchases Internet services from MOREnet through a separate FCC Form 470. MOREnet does not have the infrastructure or technical capability in place to provide WAN services to the School District; they only have the capability to provide Internet.
4. that I have read the foregoing appeal and record and avow that the information therein is true and correct to the best of my knowledge.



Kevin Richmiller
Director of Technology
City of St. Charles School District
400 N. Sixth Street
St. Charles, MO 63301

Subscribed and sworn to before me this 24th day of April, 2018

[Seal]



Notary Public

CERTIFICATE OF SERVICE

This is to certify that on April 25, 2018, a true and correct copy of the CONSOLIDATED REQUEST OF THE SCHOOL DISTRICT OF THE CITY OF ST. CHARLES FOR REVIEW OF A DECISION OF THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY was sent via e-mail to the Schools and Libraries Division of the Universal Administrative Company at appeals@sl.universalservice.org.

/s/ Cynthia B. Schultz

EXHIBIT 1

USAC DENIAL DECISION FOR FY 2016

BEN	BEN Name	Post-Commitment Request Type	FRN	Post-Commitment Decision (FRN Level)	Post-Commitment Rationale (FRN Level)	Revised FRN Funding Decision	FCC Form 471	Establishing FCC Form 470	SPIN	Service Provider	Total Eligible One Time Charges
136937	SCHOOL DISTRICT OF THE CITY OF ST. CHARLES	Appeals	1699059727	Denied	470 did not properly include the service for which funding was sought in the FCC Form 471 application, which is a violation of the FCCs competitive bidding rules. Specifically, The FRN requests 1 gbps optical internet WAN circuits. The 470 requests "internet access with firewall included and voip services 100 mbps thru Morenet." The Form 470 does not correlate to the service requested in the FRN. Accordingly, the Form 470 does not properly competitively bid for the services requested in the FRN. FCC rules require that, except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support by submitting a complete FCC Form 470 to USAC web site for potential service providers to evaluate. Since the services for which the applicant sought funding were not properly posted to the website for competitive bidding, the commitment was been rescinded in full and USAC made a determination to seek recovery of any improperly disbursed funds from the applicant. In your appeal, you did not provide any new information that could overturn the original decision. Your appeal did not show that USAC's determination was incorrect. Consequently, your appeal is denied.	Funded	161029263	568560001042719	143024207	Charter Fiberlink - Missouri, LLC	\$0.00

ATTACHMENT 1

**CONSOLIDATED REQUEST OF THE SCHOOL DISTRICT OF THE CITY OF ST. CHARLES FOR
REVIEW OF A DECISION OF THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY AND
PETITION FOR WAIVER
March 22, 2018**

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
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Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	
Request for Review of a Decision of the)	471 Application Numbers
Universal Service Administrator and)	928601 (FRN 2536087) (2013)
Petition for Waiver of the Commission's)	961287 (FRN 2611835) (2014)
Rules of)	1006874 (FRN 2733976) (2015)
)	161029263 (FRN 1699059727) (2016)
School District of the City of St. Charles St.)	171037633 (FRN 1799084213) (2017)
Charles, Missouri)	

**CONSOLIDATED REQUEST OF THE SCHOOL DISTRICT OF THE CITY OF ST. CHARLES FOR
REVIEW OF A DECISION OF THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY AND
PETITION FOR WAIVER**

Charles Brazeale
Assistant Superintendent for Business
and Technology
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March 22, 2018

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Summary

In this Consolidated Request for Review and Petition for Waiver, the School District for the City of St. Charles (“St. Charles or School District”) seeks review and reversal of four decisions by USAC to deny funding to St. Charles for Funding Years 2013, 2014, 2015, and 2017 (“USAC Decisions”),¹ because it determined that St. Charles had violated the Commission’s competitive bidding rules. These four USAC Decisions denied the appeals of St. Charles of three Commitment Adjustments, and one FY 2017 Revised Funding Commitment Decision Letter posted in the EPC on February 28, 2018 that, in turn, rescinded the School District’s funding commitments and denied funding from the Schools and Libraries Universal Service Support Mechanism (“E-Rate”) in full for those funding years.

In conjunction with this review, St. Charles requests that the Wireline Competition Bureau (“Bureau”) rescind a similar COMAD for Funding Year 2016 (together with the three identified above, the “COMADs”), which is currently the subject of an additional appeal that remains pending with USAC, and which is based on precisely the same establishing Form 470 filings, and surrounding facts and circumstances.²

The Bureau should reverse USAC’s Decisions, because the COMADs are based on an incorrect determination that the School District’s Funding Year 2013 Form 470 filing “did not properly include the service for which funding was sought in the FCC Form 471 application,

¹ Administrator’s Decisions on Appeal for FY 2013, FY 2014, and FY 2015, dated January 23, 2018 (USAC Decisions), *see* Exhibit A, hereto. On February 28, 2018, USAC also denied the FY 2017 by way of a Revised Funding Commitment Decision Letter noted in the EPC portal, but has not issued a written Notice of Denial to the School District

² St. Charles Letter of Appeal to USAC for FY 2016 Application Number 161029263 (FRN 1699059727), *see* Exhibit B, hereto.

which is a violation of the FCCs competitive bidding rules.”³ USAC reached this conclusion by focusing on one portion of the FY 2013 Form 470, which requested an Internet access service, and concluding that it did not encompass the optical Internet WAN circuits offered and accepted in the only bid that St. Charles received. USAC disregarded (or did not notice) an additional request for “other eligible internet services” or “other eligible telecom services, as needed” in that same Form 470 which was, in fact, sufficiently broad to encompass the 1 Gbps WAN service that St. Charles received.

Instead, on November 3, 2017 (FY 2017 FCDL Denial) and November 20, 2017 (FY 2016)⁴, and December 20, 2017 (FY 2013-2015), USAC issued one FCDL Denial and four Commitment Adjustment Letters, respectively, denying \$82,242.00 for FY 2017 and rescinding \$297,477.31 for a total of \$379,719.31 in aggregate in E-Rate support spanning five funding years and originally committed under five Funding Request Numbers, namely 2536087 from FY2013; 2611835 from FY 2014, 2733976 from FY 2015, 161029263 from FY 2016, and 1799084213 from FY 2017 based on USAC’s finding that St. Charles had not properly included the service on its originating FCC Form 470 for which funding was sought in its FCC Form 471

³ USAC Commitment Adjustment Letters for FY 2013, FY 2014, and FY 2015, dated Dec. 20, 2017, and USAC Commitment Adjustment Letters for FY 2016, dated November 20, 2017 and FY 2017 FCDL Denial, *see* Exhibit C, hereto.

⁴ On November 20, 2017, USAC also issued a COMAD for FY 2016 471 Application Number 161029263 (FRN 1699059727) in the amount of \$94,240.80 and sought recovery for \$94,240.80, for which St. Charles’ appeal remains pending with USAC. St. Charles has included the FY 2016 in the scope of this Consolidated Request for Review and Petition for Waiver because it is based on the same facts and circumstances as the FY 2013, FY 2014, and FY 2015 COMADs, and FY 2017 FCDL Denial.

applications.⁵ As a result, USAC found that St. Charles had violated FCC's competitive bidding rules.⁶

On December 22, 2012, and January 8, 2018, St. Charles' appealed the FCDL Denial and the four COMADs (the "Appeals") through its Consultant, eRate Program, LLC ("Consultant").⁷ On January 23, 2018, USAC denied three of Appeals of the School District that span Funding Years 2013, 2014, and 2015 on the basis that no new information was provided sufficient to overturn the original decision.⁸ On February 28, 2018, USAC denied FY 2017 along the same grounds; yet, no Administrator's Decision Letter has issued.

The COMADs and the 2017 Funding Denial should be reversed because the Funding Year Form 470 sufficiently described the WAN service that St. Charles was requesting. WAN service was included in a different request for service from the one on which the COMADs rely, and the fact that Charter Fiberlink – Missouri, LLC ("Charter", the only bidder) successfully offered such service provides evidence that service providers were able to properly understand the School District's request. Furthermore, to the extent that any error occurred, it was ministerial and clerical in nature and of the type that USAC should have permitted St. Charles to correct through a timely RAL change.

Moreover, any error was cured through the subsequent Funding Year 2014 Form 470. In Funding Year 2014, when St. Charles filed its FCC Form 470 for these services, St. Charles did

⁵ See Exhibit C.

⁶ *Id.*

⁷ Letter of Appeals to USAC, dated December 22, 2017 and Jan. 8, 2018, respectively, see Exhibit D, hereto.

⁸ See Exhibit A.

not receive any bid for service. St. Charles, after careful consideration, then properly chose Charter and decided to remain in its existing contract with Charter.

In preparing the Form 471 funding requests for those years, however, the Consultant to St. Charles regrettably made a recurring ministerial or clerical error by continuing to cite the FY 2013 Form 470 as the establishing document. That error went unnoticed by the Consultant, St. Charles, Charter, and the USAC staff through all of the four remaining years of the Charter contract. Thus, the COMADs for these years also erroneously cite the same language from the FY 2013 Form 470, and reach the same erroneous conclusion that it “did not properly include the service for which funding was sought in the FCC Form 471 application.” Not only do those COMADs, therefore, disregard the same request for additional “Internet services” that supports the FY 2013 commitment, but also the entire FY 2014 Form 470, which independently contains a curative request for transport services.

The Bureau has on multiple occasions explicitly recognized the citation of a wrong Form 470 in the Form 471 as a ministerial or clerical error that USAC should allow the Applicant to correct. Had USAC given St. Charles that opportunity here, this Request for Review could have been, at a minimum, substantially narrower in scope.

Thus, St. Charles respectfully requests the Bureau to waive its rules and to direct USAC to discontinue recovery actions against the School District. These unfortunate errors were minor in nature and were not the cause or result of waste, fraud, or abuse. Rather, St. Charles followed all of the core program requirements and, at the time of these funding requests, only one provider serviced this area and bid on these critical services. Accordingly, there is no public interest rationale for denying the School District’s funding requests for services already provided and

properly paid for. As such, the Bureau should respectfully grant the waivers and direct USAC to discontinue recovery actions for the FRNs at issue.

To the extent the Bureau concludes otherwise and sustains any of the COMADs, it should direct USAC to pursue recovery of the funds at issue jointly against Charter, as an equally culpable party.

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**CONSOLIDATED REQUEST OF THE SCHOOL DISTRICT OF THE CITY OF ST. CHARLES FOR
REVIEW OF A DECISION OF THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY AND
PETITION FOR WAIVER**

Pursuant to sections 54.719 and 54.722 of the Commission's rules,⁹ the School District of the City of St. Charles ("St. Charles or School") hereby respectfully requests that the Wireline Competition Bureau (the "Bureau") review and reverse three Decisions on Appeal of the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") dated January 23, 2018 and the FY 2017 RFCDL dated February 28, 2018 (the "Decisions").¹⁰ In addition, to the extent necessary and pursuant to section 1.3 of the Commission's rules,¹¹ St. Charles requests a waiver of the Commission's competitive bidding rules for the Schools and Libraries Universal Service Support Mechanism ("E-rate") to cure an inadvertent, alleged failure to properly include on the School District's FCC Form 470 for Funding Year 2013 a complete description of the service for which funding was sought, and to permit St. Charles to correct the

⁹ 47 C.F.R. § 54.719(b), (c); 47 CFR § 54.722(a).

¹⁰ See Exhibit A.

¹¹ 47 C.F.R. §1.3.

erroneous Form 470 Application Numbers cited in its FCC Form 471 submissions for Funding Years 2014-2017.¹²

To the extent that the Commission denies these requests, St. Charles requests that the Bureau direct USAC to initiate joint recovery from Charter Fiberlink – Missouri, LLC (“Charter”), St. Charles’ service provider for the services in question, which shares culpability for the error.

The Request is timely filed. Section 54.720(b) of the Commission’s rules requires the filing of an appeal “within sixty (60) days of issuance” of a decision by USAC. The USAC Denials were dated January 23, 2018, meaning that this Request for Review is due on Monday, March 26, 2018, which is the next business day after the 60-day period expires.¹³

Background

A. Funding Year 2013

1. Form 470 and Form 471 Applications

On August 23, 2012, St. Charles’ Consultant posted a Form 470 (No. 568560001042719, “FY 2013 Form 470”) to the USAC web site, indicating that it was seeking, among other things, telecommunications services and Internet access for FY 2013.¹⁴ In Block 9 of the FY 2013 Form 470, St. Charles indicated that it was seeking, in relevant part, “internet access with firewall included and voip services,” with capacity specified as “100 mbps thru Morenet.”¹⁵ In addition, the FY 2013 Form 470 indicated that it was also seeking “other eligible internet services” and

¹² The COMADs issued by USAC state that St. Charles violated the Commission’s “competitive bidding rules,” but lack any citation of a specific rule section. Therefore, St. Charles is unable to be more specific with this waiver request.

¹³ 47 C.F.R. §§ 54.720(b), 1.4(j).

¹⁴ See FY 2013 FCC Form 470, see Exhibit E, hereto.

¹⁵ *Id.*

“other eligible telecom services”, “as needed.”¹⁶ The FY 2013 Form 470 indicated that no RFP was filed.¹⁷ More than 6 months later, St. Charles had only received one bid, namely from the incumbent service provider Charter.¹⁸ On March 12, 2013, Charter proposed a renewal of St. Charles’ existing 1 Gbps Wide Area Network (“WAN”) Internet service to 13 sites for a five-year period. St. Charles accepted this bid proposal and awarded the contract to Charter.

On March 14, 2013, St. Charles’ Consultant filed FCC Form 471 Application Number 928601, seeking funding for the same services for FRN 2536087 under the Internet category, and identified the services being sought as 1 Gbps to all locations.¹⁹ On that same date, the Consultant also filed the Item 21 and attached the contract signed by St. Charles on the same date.²⁰ The service is listed in the FY 2013 Item 21 Attachment as “Int 1GIG for all locations.” On March 14, 2013, St. Charles also entered into an a Data Transport Service Agreement and associated service order with Charter (the “Charter WAN Contract”) for 1 Gbps WAN service to all 13 sites.²¹

On March 22, 2013, USAC sent a Receipt Acknowledgement Letter to the School District for the 471 Application. On April 4, 2013, the Consultant, through communication with the service provider Charter and USAC, changed the category of service from Internet to telecommunications and corrected the SPIN number, because this was the SPIN number used for

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ St. Charles’s 2017 Selective Review Response, *see* Exhibit F, hereto.

¹⁹ FCC Form 471 RAL Correction, dated April 4, 2013, *see* Exhibit G, hereto.

²⁰ FY 2013 FCC Form 470 Item 21 Attachment, *see* Exhibit H, hereto.

²¹ *Id.*

transport services under telecommunications services for Charter.²² Over the next several months, USAC conducted a thorough PIA review to determine whether the FCC Form 470 and FCC Form 471 met FCC and USAC requirements. On July 23, 2013, USAC issued a positive FCDL approving 471 Application Number 928601 (FRN 2536087).²³ Subsequently, Charter provided and invoiced for the service, which underwent a PIA review and was approved.

At no time during review did USAC notify the School District or the Consultant of any error associated with the FY2013 FCC Form 470. Not until late 2017, after reviewing the School District's subsequent request for special construction and initiating a Selective Review, and as the five-year term of the contract was drawing to a close, did USAC raise any compliance question regarding these services. During that Selective Review, the School District and the Consultant explained to USAC that the only bidder for this service was Charter and that the inclusion of the words "thru Morenet" was simply a ministerial and clerical error made by a new employee.²⁴

2. COMAD

On December 20, 2017, USAC issued a COMAD for FCC Form 471 Application Number 928601, FRN 2536087, in the amount of \$70,819.84 and sought recovery in the amount of \$69,119.95. The Funding Commitment Adjustment Explanation follows:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. The FCC Form 470 did not properly include the service for which funding was sought in the FCC Form 471 Application, which is a violation of the FCCs [sic] competitive bidding rules. Specifically, The [sic] FRN requests 1gbps optical internet WAN circuits. The 470 requests "internet access with firewall included and voip services 100 mpbs thru Morenet." The Form 470 does not correlate to the services requested in the FRN. Accordingly, the Form 470 does not properly competitively bid for the

²² See Exhibit G.

²³ USAC FCDL for FY 2013 471 Application Number 928601, *see* Exhibit I, hereto.

²⁴ See Exhibit F.

services requested in the FRN. FCC rules require that, except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support by submitting a complete FCC Form 470 to USAC web site for potential service providers to evaluate. Since the services for which you sought funding were not properly posted to the website for competitive bidding, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.²⁵

On January 8, 2018, the Consultant for St. Charles filed an appeal with USAC (USAC FY 2013 Appeal).²⁶ The basic tenets of the USAC FY 2013 Appeal stated that the incorrect language used in the FY 2013 Form 470 “arose from a simple ministerial/clerical error,” due to a new employee of the Consultant incorrectly transposing 100 mbps or more to 100 mbps thru Morenet. The USAC Appeal further argued that this was a clear question of mistake, because Morenet does not even provide WAN services and the individual responsible for filling out the Form 470 was a new employee.²⁷ On January 23, 2018, USAC denied St. Charles’ FY 2013 Appeal on the basis that no new information was provided sufficient to overturn the original decision.²⁸

B. Funding Year 2014

1. Form 470 and Form 471 Applications

On December 23, 2013, the Consultant filed a FY 2014 Form 470 Application Number 734710001187435 (FY 2014 Form 470), seeking Internet services for 250 Mbps or more, and also transport services consisting of “2 or more T-1 transmission lines.” In doing so, St. Charles thereby superseded the FY 2013 Form 470, correcting any ministerial or clerical error appearing

²⁵ See Exhibit C.

²⁶ See Exhibit D.

²⁷ *Id.*

²⁸ See Exhibit A.

therein.²⁹ The FY 2014 Form 470 again indicated that no RFP was filed.³⁰ St. Charles did not receive any bid from another service providers.³¹ St. Charles, pursuant to the Commission's *Kalamazoo Order*,³² thus considered the existing Charter contract as one of the bids.

On March 3, 2014, St. Charles filed the FCC Form 471 Application # 961287 for FRN 2611835, seeking fiber optic/oc x 1 Gig transport services³³ in the discounted funding amount of \$72,372.96 (\$9,138.00 monthly) for a multi-year contract with an expiration date of June 30, 2018.³⁴ However, the Consultant made a clerical error that remained uncorrected in the RAL by pointing to the FY 2013 FCC Form 470 Application Number 568560001042719 instead of the new FY 2014 Form 470 Number 734710001187435.³⁵ Over the next several months, SLD conducted another thorough PIA review to determine whether the FCC Form 470 and FCC Form 471 met FCC and USAC requirements.

On May 15, 2014, SLD issued an FCDL for FCC Form 471 Application Number 961287 (FRN 2611835) (Charter) in the amount of \$72,372.96.³⁶ Subsequently, Charter provided invoices for the services, which underwent an invoicing review and were approved.

²⁹ See Exhibit J, hereto.

³⁰ *Id.*

³¹ See Exhibit F.

³² *Request for Review of the Decision of the Universal Service Administrator by Kalamazoo Public Schools, Kalamazoo, Michigan*, CC Docket No. 96-45, Order on Reconsideration, DA 02-2975 (Wir. Comp. Bur. 2002), at ¶¶ 6-7 (“*Kalamazoo Order*”).

³³ See Exhibit K, hereto

³⁴ *Id.*

³⁵ See Exhibit L, hereto.

³⁶ *Id.*

2. COMAD

On December 20, 2017, USAC issued a COMAD for FCC Form 471 Application Number 961287, FRN 2611835, in the amount of \$72,372.96 and sought recovery in the same amount. The Funding Commitment Adjustment Explanation follows:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. The FCC Form 470 did not properly include the service for which funding was sought in the FCC Form 471 Application, which is a violation of the FCCs [sic] competitive bidding rules. Specifically, The [sic] FRN requests 1gbps optical internet WAN circuits. The 470 requests “internet access with firewall included and voip services 100 mpbs thru Morenet.” The Form 470 does not correlate to the services requested in the FRN. Accordingly, the Form 470 does not properly competitively bid for the services requested in the FRN. FCC rules require that, except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support by submitting a complete FCC Form 470 to USAC web site for potential service providers to evaluate. Since the services for which you sought funding were not properly posted to the website for competitive bidding, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.³⁷

On January 8, 2018, the Consultant for St. Charles filed an appeal with USAC (“USAC FY 2014 Appeal”).³⁸ Instead of clarifying the underlying clerical error in transcribing the incorrect 470 Application Number for the FY 2014 Form 471, the USAC appeal mirrored that for FY 2013. Namely, the basic tenets of the USAC FY 2014 Appeal stated that the incorrect language used in the FY 2014 Form 470 “arose from a simple ministerial/clerical error,” due to an new employee of the Consultant incorrectly transposing 100 mbps or more to 100 mbps thru Morenet. The USAC FY 2014 Appeal further argued that this was a clear question of mistake,

³⁷ See Exhibit C.

³⁸ See Exhibit D.

because Morenet does not even provide WAN services.³⁹ On January 23, 2018, USAC denied St. Charles' USAC FY 2014 Appeal on the basis that no new information was provided sufficient to overturn the original decision.⁴⁰

C. Funding Year 2015

1. Form 471 Application

On February 10, 2015, the Consultant for St. Charles filed the FCC Form 471 Application Number 1006874 for FRN 2733976, seeking "fiber 1 gbps optical Internet WAN" in the discounted funding amount of \$65,793.60 for a multi-year contract with an expiration date of June 30, 2018.⁴¹ However, the prior year's ministerial/clerical error was perpetuated in not pointing to the correct FCC Form 471 that remained uncorrected in the RAL by pointing to the FY 2013 FCC Form 470 Application Number 8560001042719 instead of the new FY 2014 470 Number 734710001187435. Over the next several months, SLD conducted a thorough PIA review to determine whether the FCC Form 470 and FCC Form 471 met FCC and USAC requirements. On July 17, 2015, USAC issued an FCDL for FCC Form 471 Application Number 1006874, FRN 2733976 (Charter) in the amount of \$65,793.60⁴² Subsequently, Charter provided invoices for transport services, which underwent an invoicing review and were approved.

³⁹ *Id.*

⁴⁰ *See* Exhibit A.

⁴¹ FY 2015 FCC Form 471 Application, *see* Exhibit M, hereto.

⁴² FY 2015 FCDL, *see* Exhibit N, hereto.

2. COMAD

On December 20, 2017, USAC issued a COMAD for FCC Form 471 Application Number 1006874, FRN 2733976, in the amount of \$65,793.60 and sought recovery in the amount of \$61,743.60. The Funding Commitment Adjustment Explanation follows:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. The FCC Form 470 did not properly include the service for which funding was sought in the FCC Form 471 application, which is a violation of the FCC's competitive bidding rules. Specifically, The FRN requests 1gbps optical internet WAN circuits. The 470 requests "internet access with firewall included and voip services 100 mbps thru Morenet." The Form 470 does not correlate to the service requested in the FRN. Accordingly, the Form 470 does not properly competitively bid for the services requested in the FRN. FCC rules require that, except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support by submitting a complete FCC Form 470 to USAC web site for potential service providers to evaluate. Since the services for which you sought funding were not properly posted to the website for competitive bidding, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.⁴³

On January 8, 2018, the Consultant for St. Charles filed an appeal with USAC ("USAC FY 2015 Appeal").⁴⁴ Instead of clarifying the underlying clerical error in transcribing the incorrect 470 Application Number for the FY 2014 Form 471, the USAC appeal mirrored that for FY 2013. Namely, the basic tenets of the USAC FY 2015 Appeal stated that the incorrect language used in the FY 2013 Form 470 "arose from a simple ministerial/clerical error," due to a new employee of the Consultant incorrectly transposing 100 mbps or more to 100 mbps thru Morenet. The USAC Appeal further argued that this was a clear question of mistake, because

⁴³ See Exhibit C.

⁴⁴ See Exhibit D.

Morenet does not even provide WAN services.⁴⁵ On January 23, 2018, USAC denied St.

Charles' USAC FY 2015 Appeal on the basis that no new information was provided sufficient to overturn the original decision.⁴⁶

D. Funding Year 2016

In conjunction with this review, St. Charles requests that the Wireline Competition Bureau ("Bureau") rescind a similar COMAD for Funding Year 2016 (together with the three identified above, the "COMADs"), which is currently the subject of an additional appeal that remains pending with USAC, and which is based on precisely the same establishing Form 470 filings, and surrounding facts and circumstances.⁴⁷

1. Form 471 Application

On April 8, 2016, St. Charles' filed the FCC Form 471 Application Number 161029263 for FRN 1699059727, seeking fiber 1 gbps optical Internet WAN" in the discounted funding amount of \$99,640.80 for a multi-year contract with an expiration date of June 30, 2018.⁴⁸

However, the prior year's ministerial/clerical error was perpetuated in not pointing to the correct FCC Form 471 that remained uncorrected in the RAL by pointing to the FY 2013 FCC Form 470 Application Number 8560001042719 instead of the new FY 2014 470 Number 734710001187435. Over the next eight months, SLD conducted a thorough PIA review to determine whether the FCC Form 470 and FCC Form 471 met FCC and USAC requirements.

⁴⁵ *Id.*

⁴⁶ *See* Exhibit A.

⁴⁷ St. Charles Letter of Appeal to USAC for FY 2016 Application Number 161029263 (FRN 1699059727), *see* Exhibit B, hereto.

⁴⁸ FY 2016 FCC Form 471 Application, *see* Exhibit O, hereto.

On December 28, 2016, USAC issued an FCDL for FCC Form 471 Application # 161029263 for FRN 1699059727 (Charter) in the amount of \$99,640.80. Subsequently, Charter provided invoices for transport services, which underwent an invoicing review and were approved.

2. COMAD

On November 20, 2017, USAC issued a COMAD for FCC Form 471 Application Number 161029263, FRN 1699059727, in the amount of \$99,640.80 and sought recovery for \$94,240.80. The Funding Commitment Adjustment Explanation follows:

After a thorough investigation, it has been determined that this funding commitment must be rescinded in full. The FCC Form 470 did not properly include the service for which funding was sought in the FCC Form 471 Application, which is a violation of the FCCs [sic] competitive bidding rules. Specifically, The [sic] FRN requests 1gbps optical internet WAN circuits. The 470 requests “internet access with firewall included and voip services 100 mpbs thru Morenet.” The Form 470 does not correlate to the services requested in the FRN. Accordingly, the Form 470 does not properly competitively bid for the services requested in the FRN. FCC rules require that, except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support by submitting a complete FCC Form 470 to USAC web site for potential service providers to evaluate. Since the services for which you sought funding were not properly posted to the website for competitive bidding, the commitment has been rescinded in full and USAC will seek recovery of any improperly disbursed funds from the applicant.⁴⁹

On January 8, 2018, the Consultant for St. Charles filed an appeal with USAC (USAC FY 2016 Appeal).⁵⁰ Instead of clarifying the underlying clerical error in transcribing the incorrect 470 Application Number for the FY 2016 Form 471, the USAC appeal mirrored that for FY 2013. Namely, the basic tenets of the USAC FY 2016 Appeal stated that the incorrect

⁴⁹ See Exhibit C.

⁵⁰ See Exhibit D.

language used in the FY 2013 Form 470 “arose from a simple ministerial/clerical error,” due to a new employee of the Consultant incorrectly transposing 100 mbps or more to 100 mbps thru Morenet. The USAC Appeal further argued that this was a clear question of mistake, because Morenet does not even provide WAN services.⁵¹ This appeal is still pending with USAC, but is included herein, because it is based upon the same set of facts and circumstances for which St. Charles is appealing FY 2014-2015 and FY 2017.

E. Funding Year 2017

1. Form 471 Application

On May 9, 2017, St. Charles’ filed the FCC Form 471 Application # 171037633 for FRN 1799084213, seeking “fiber 1 gbps optical Internet WAN” in the discounted funding amount of \$99,640.80 for a multi-year contract with an expiration date of June 30, 2018. However, the prior year’s ministerial/clerical error was perpetuated in not pointing to the correct FCC Form 471 that remained uncorrected in the RAL by pointing to the FY 2013 FCC Form 470 Application Number 8560001042719 instead of the new FY 2014 470 Number 734710001187435. Over the next six months, SLD conducted a thorough PIA review to determine whether the FCC Form 470 and FCC Form 471 met FCC and USAC requirements.

2. FCDL Denial

On November 3, 2017, USAC issued a denial FCDL for FCC Form 471 Application Number 171037633 for FRN 1799084213 (Charter) in the amount of \$0.00. USAC found that the FCC Form 470 violated the competitive bidding requirements, because the FCC Form 470

⁵¹ *Id.*

did not include the type of service contracted for; thereby violating the 28 day competitive bidding process.

On December 22, 2017, the Consultant for the School District filed an appeal that echoed the arguments made in the other appeals.⁵² On February 28, 2018, USAC issued a Revised Funding Decision denying the appeal through the EPC. To date, no Administrator's Decision on Appeal has been issued by USAC.

F. Funding Year 2017 Selective Review

On August 22, 2017, USAC commenced a Selective Review on St. Charles's FY 2017 Request for Special Construction of fiber to lower costs by migrating away from its current Charter WAN services. St. Charles again provided a copy of the contract along with responses to the Selective Review questions. Specifically, St. Charles indicated that the Charter bid was the only bid received.⁵³ As such, St. Charles had entered into a 5-year contract for 1Gig of WAN service to be provided through June 30, 2018. In November 2017, USAC denied funding for the entire FY 2017 period for both the WAN contract and special construction.⁵⁴ This Consolidated Request for Review and Petition for Waiver ensued.

Discussion

This is not case of waste, fraud, or abuse, or a flagrant violation of the Commission's rules. Rather, this is a case where mistakes were made in clear view of USAC and PIA reviewers on the FCC Form 470 and FCC Form 471 and, if they had been corrected, would have resulted in funding. Simply put, this is a case of precisely the types of issues that were addressed

⁵² See Exhibit D.

⁵³ See Exhibit F.

⁵⁴ The Special Construction Letter of Appeal is still pending before USAC.

in the landmark Commission *Bishop Perry* Order, which paved the way for the correction of ministerial and clerical issues. At issue here are several such issues, *e.g.*, citing the wrong FCC Form 470 Application Number on the 471, mistakenly referring to a state consortium on the 470 called Morenet, instead of writing “more,” and the category of service within Priority 1 service. Unfortunately, these small, ministerial and clerical errors were repeated across funding years, unnoticed by the Consultant, School District, and USAC staff alike, despite multiple PIA funding reviews. Thus, they ultimately resulted in COMADs going back five years for several minor mistakes that would have easily been resolved with a RAL correction or PIA inquiry, as is often the case, and ultimately caused no real harm to any party. Therefore, for the following reasons, the Commission should grant the Petitions for Waiver and direct USAC to restore funding for the affected funding requests.

There are two FCC Form 470s that are at issue in this case for FY 2013 and FY 2014, respectively, both included requests for telecommunications and Internet access services. The FCC Form 470 also changed between FY 2013 and FY 2014, creating more confusion. It appears that USAC has placed undue focus on one line item from the FY 2013 470, disregarding additional requests for telecom and Internet access services in that Form 470 and failing to consider the curative language in the FCC FY 2014 Form 470. Therefore, because any resulting error was ministerial and clerical and could have been readily corrected, St. Charles should be given that opportunity instead of suffering the unduly harsh penalty of the withdrawal and denial of five years of much needed and utilized funding.

The Commission has often waived its rules for such ministerial, clerical, and procedural errors and may do so on a motion for good cause.⁵⁵ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.⁵⁶ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁵⁷ In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.⁵⁸

A. The Bureau Should Rescind the Funding Year 2013 COMAD in Full

Leading up to FY 2013, St. Charles received Internet access services through the Missouri Research and Education Network (MOREnet), which is a statewide network that provides Internet access to its K-12 Members through the filing of a consortium application. For FY 2013, MOREnet continued to serve in such capacity under a separate E-rate consortium application. MOREnet, however, does not provide WAN transport service. Because St. Charles also needs WAN connectivity among its 13 eligible school sites, it was also required to file a separate FCC Form 470 to obtain these services with support from the E-rate program.

In FY 2013, the Consultant for St. Charles filed an FCC Form 470, intending to request bids to provide that WAN service. Instead of stating that the School District was seeking “100 Mbps or more,” however, the Consultant mistakenly wrote “100 Mbps thru Morenet.” In 2012,

⁵⁵ 47 C.F.R. §1.3.

⁵⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

⁵⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

⁵⁸ *Northeast Cellular*, 897 F.2d at 1166.

St. Charles had also hired a new Director of Technology, who was responsible for the School District's network infrastructure and design. Although he had over 13 years of experience in technology at that time, he had limited experience with E-Rate rules, and therefore did not notice the error on the FY 2013 Form 470. Furthermore, the Consultant was responsible for the filing of all of the E-Rate applications and was listed as the authorized person. As a result, all communications went directly to the Consultant, with the exception of any technical questions and bid proposals.

When the FCC Form 470 was issued in FY 2013, St. Charles did not receive any bids with the exception of one from Charter, because Charter was the incumbent provider of the School District's WAN service, and the only provider in the area with the capability to provide WAN services that connect all of the School District's buildings. Charter offered a renewal of the School District's existing 1 Gbps WAN service. St. Charles accepted this bid and, as a result, awarded a renewal of the "1GIG WAN" services to Charter under a five-year contract.

The School District entered into the contract for WAN services on March 14, 2013. The Consultant filed its FCC Form 471 and Item 21 seeking support for the "1GIG WAN" service.⁵⁹

1. No Error Was Made Because the "1GIG WAN" Service Was Contemplated under the FY 2013 Form 470

In addition to requesting "100 mbps through Morenet," the FY 2013 Form 470 also requested "other eligible internet services" to be provided in a capacity "as needed," and also "other eligible telecom services as needed" in Box 8. The "1GIG WAN" service that St. Charles purchased from Charter should be properly understood to fall under that request for service.

⁵⁹ See Exhibit H.

Given that St. Charles was already purchasing Internet access service through MOREnet, a WAN connection among the School District's eligible locations is a logical complement.

Whether the WAN is considered a telecommunications service or Internet access therefore, it was within the scope for the FY 2013 Form 470.⁶⁰ This additional FY 2013 Form 470 request for "other eligible internet services" should not be construed as a request for Internet access services. The request plainly does not use the term "Internet access." Rather, the request is worded to seek "internet services," which is sufficiently broad to encompass WAN transport, which is provisioned using Internet protocol ("IP") transport. This interpretation is particularly apt because, in addition to using the WAN for internal School District data transport and telecommunications, the School District also used the WAN to interconnect all of its eligible locations to the MOREnet Internet access service, which is delivered to a single switch located at the School District's Administrative Office.

This interpretation is most consistent with the actual bid that St. Charles received from Charter, which proposed continuation of the School District's existing 1Gbps WAN service. If the *only* relevant service request in the FY 2013 Form 470 was explicitly limited to 100 Mbps Internet access service, presumably Charter would not have considered 1 Gbps WAN responsive, and would not have submitted that bid. Charter's bid also falls squarely within the scope of the request for "other eligible telecom services, as needed," and should be understood as responsive

⁶⁰ *Request for Review of a Decision of the Universal Service Administrator by Hillsboro Independent School District, Schools and Libraries Universal service Mechanism*, CC Docket 02-6, Order, 23 FCC Rcd 15424, para. 9 (2008); *see also Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8757, 8761-62, para. 6 (2007).

to that request. Indeed, USAC allowed for this RAL correction from Internet Access to Telecommunications Service in 2013, based upon an exchange between Charter and the Consultant for the School District and USAC.⁶¹

2. The Request for “100 mbps thru Morenet” Was, at Most, a Harmless Ministerial or Clerical Error

Beginning with the Commission’s 2006 *Bishop Perry* Order, the Commission has sought to avoid the “harsh consequence”⁶² of funding denial resulting from “minor . . . inadvertent administrative, ministerial, and clerical errors,” by directing USAC to “inform applicants promptly in writing of any and all ministerial or clerical errors that are detected in their applications, along with a clear and specific explanation of how the applicant can remedy those errors.”⁶³ In doing so, it granted limited waiver flexibility of the E-rate competitive bidding and application filing rules in order to “ensure eligible schools and libraries will be able to realize the intended benefits of the E-rate program.”⁶⁴

The Commission thus recognized and accepted the inevitability of application errors made in good faith by “school administrators, technology coordinators and teachers” who do not have expertise or primary responsibility for pursuing grants of federal financial support,⁶⁵ and sought to soften the potentially catastrophic results of an ensuing funding denial or COMAD.

⁶¹ See Exhibit G.

⁶² *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, New Orleans, LA*, et al., CC Docket N. 02-6, Order, FCC 06-54, 21 FCC Rcd 5316 (2006) (“*Bishop Perry*”), Statement of Comm’r Copps.

⁶³ *Id.* at ¶ 23.

⁶⁴ *Id.* at ¶ 2.

⁶⁵ *Id.* at ¶ 14.

That is precisely the case here. The School District's newly hired Director of Technology, faced with an unfamiliar process and unfamiliar set of federal forms, failed to notice that the School District's Consultant had erred in placing a request for MOREnet service on the FY 2013 Form 470 and believed that it was sufficient in seeking "other eligible telecom services." The potential for confusion here is especially high, since St. Charles did in fact obtain E-rate supported Internet access service through MOREnet, albeit through a separate consortium application, and had previously received transport from Charter.

It is plain that the error was not considered substantive at the time. Charter demonstrated that it correctly understood the FY 2013 Form 470 by responding with a bid to provide the 1 Gbps WAN service that the School District, in fact, needed and intended to request. Similarly, the USAC SLD staff, after conducting extensive PIA review, both that year and subsequently, never detected an issue nor informed St. Charles "promptly in writing" of any error, as *Bishop Perry* would have required it to do.

Thus, as in *Bishop Perry*, a waiver is appropriate here.⁶⁶ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.⁶⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁶⁸ In sum, waiver is appropriate if

⁶⁶ 47 C.F.R. § 1.3.

⁶⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

⁶⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.⁶⁹

In this case, it is plain that these two criteria are met. *First*, special circumstances make a COMAD unjust that seeks to reclaim or deny five years of funding based on a purported error that, if it occurred at all, was minor, inadvertent, and ultimately harmless in context. Charter was the only service provider that had the network infrastructure in place to offer service connecting all 13 of the School District's locations. As a result, no other bidder could have been discouraged or misled by the content of the Form 470. Charter itself correctly understood the FY 2013 Form 470 to encompass a request for district-wide WAN service and responded with perhaps the most obvious bid: an offer to continue the School District's existing 1 Gbps WAN arrangement. Similarly, USAC staff raised no concern with the content of the FY 2013 Form 470, the FY 2013 RAL correction either that year, or in those that have unfolded since. While the request for service could perhaps have been articulated more artfully, the content of the FY 2013 Form 470 was plainly understood by all interested parties.

Furthermore, this case falls squarely within the realm of the inequitable results that *Bishop Perry* sought to avoid. The error on which the COMAD is based was minor and inadvertent and went unnoticed by a new Director of Technology whose primary responsibilities had little to do with E-rate application processes or other intricacies of federal funding requests, and who reasonably believed that the School District's Consultant could be relied upon to get it right.

⁶⁹ *Northeast Cellular*, 897 F.2d at 1166.

The public interest also supports a waiver. Even if the Bureau concludes that the FY 2013 Form 470 did not sufficiently describe the services that St. Charles was seeking, a multi-year series of COMADs totaling hundreds of thousands of dollars is an exceptionally harsh penalty under these facts and circumstances. With only a single service provider in the market with the infrastructure in place to reach all 13 School District locations, and that service provider presumably aware of that fact based on market intelligence on its competitors' capabilities gathered in the course of its business, a clearer description in the Form 470 would be unlikely to change Charter's bidding approach at all. This supposed error could neither have provided any advantage to St. Charles nor Charter, nor could it have increased the School District's discount rate or the amount of E-rate support it received.

Furthermore, imposing such a large series of COMADs on St. Charles will exacerbate the budget pressures the School District already faces. The funds were long ago paid to Charter, and the services were long ago delivered. This large series of COMADs would cause grave injury to the educational opportunities St. Charles strives to provide to students today, a result that runs directly contrary to the entire purpose of the schools and libraries universal service support program. As the Commission found in *Aberdeen* and the *Bishop Perry Order*, rigid adherence to certain E-rate rules and requirements that are "procedural" in nature may not promote the goals of section 254 of the Act – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.⁷⁰

⁷⁰ *Application for Review of the Decision of the Universal Service Administrator by Aberdeen School District, Aberdeen, WA, et al.*, CC Docket No. 02-6, Order, FCC 07-63, 22 FCC Red 8757 ¶ 7 (2007) ("*Aberdeen*"); *Bishop Perry* at ¶ 23.

Requiring the repayment of these COMADs on the School District would place a heavy burden on the advancement of its student population in a time, more than ever, when school districts are trying desperately to equip their students with the best tools and high-speed bandwidth to keep up with digital education and assessments. The repayment of hundreds of thousands of dollars would set back the clock for the students of St. Charles School District for years and prevent them from flourishing in an environment in which the School Administrators and teachers have devoted much attention and commitment to meeting the federal and state technology goals to allow their students to be prepared for 21st century jobs. The Assistant Superintendent for Business and Technology and Chief Financial Officer stated that the repayment of these funds “would severely handicap the district in our efforts to provide students with the tools necessary for success in the 21st century.”⁷¹ The School District also has the highest free and reduced lunch rate in their county, serves the highest rate of students with special needs, and students with English as a second language.⁷² Several of these factors alone equate to a higher risk for failure, coupled with inadequate future budgets due to the COMADs would likely lead to risks of higher failure, rather than increasing success.

These factors, along with compliance with core requirements; zero evidence of waste, fraud, and abuse; and alignment with the Commission’s goals to “promote the statutory requirements of section 254(h) of the Communications Act of 1934, as amended (the Act), by helping to ensure that eligible schools and libraries actually obtain access to discounted

⁷¹ Letter from Charles W. Brazeale to Marlene Dortch, Secretary, Federal Communications Commission, dated Mar. 22, 2018, *see* Exhibit P, attached hereto.

⁷² *Id.*

telecommunications and information services,⁷³ are in alignment with the progeny of Commission Orders following the *Bishop Perry Order* allowing for the correction of ministerial, clerical, and procedural errors⁷⁴ and speak in favor of granting a waiver for these funding requests and direct USAC to discontinue recovery actions against the City of St. Charles School District.

B. The Bureau Should Rescind the Remaining COMADS for FY 2014-2016 and Restore Funding for FY 2017 Because Any Error in the FY 2013 Form 470 Was Cured in 2014

The error made on the FY 2013 FCC Form 470 was corrected in FY 2014. St. Charles issued a new FY 2014 FCC Form 470 seeking both 250 Mbps or more of Internet service. Yet again, St. Charles did not receive any other bids. As a result, as is permitted under the *Kalamazoo Order*,⁷⁵ St. Charles considered its contract with its current service provider and continued to receive transport services from Charter under the FY 2013 contract that expired on June 30, 2018.

Unfortunately, when the Consultant filed the FCC Form 471 for FY 2014, it mistakenly pointed to the wrong Form 470. Instead of citing the new FY 2014 Form 470 (No. 734710001187435), the FY 2014 Form 471 again cited the old FY 2013 FCC Form 470 as the originating 470 application. This error, repeated across subsequent funding years over the life of the contract, resulted in the cascade of COMADs for the ensuing FYs 2014-2016 and denial for FY 2017.

⁷³ 47 U.S.C. § 254(h).

⁷⁴ *Bishop Perry* at ¶ 9,

⁷⁵ *Kalamazoo* at ¶ 6.

The Bureau has repeatedly and explicitly recognized that “entering the wrong FCC Form 470 number . . . on the[] FCC Form 471” is an inadvertent ministerial or clerical error that USAC should permit the applicant to correct.⁷⁶ Similarly, in the *Grand Rapids Public Schools Order*, which is also directly on point, the Bureau, in conducting a *de novo* review, found that:

Grand Rapids committed unintentional, clerical errors when it initially inserted the incorrect FCC Form 470 number on its Funding Year 2006 application, and again when responding to PIA requests for additional information. We do not believe, however, that these mistakes warrant the complete rejection of Grand Rapids’ application for E-rate funding. Rather, based on the record before us, we find that Grand Rapids complied with core program requirements. Specifically, we find that Grand Rapids posted an FCC Form 470 to USAC’s web site soliciting bids for the services at issue and waited 28 days before entering into an agreement with a service provider for the requested services. Additionally, we find that Grand Rapids had a signed multi-year contract as of March 2003, well before the time Grand Rapids submitted its Funding Year 2006 application to USAC. Importantly, Grand Rapids’ appeal does not involve a misuse of funds and there is no evidence in the record that Grand Rapids engaged in activity to defraud or abuse the E-rate program. Thus, we find that denying Grand Rapids’ request for funding would create undue hardship and prevent these otherwise eligible schools from receiving E-rate funding.⁷⁷

Thus, this an error that has been identified as a correctable error in making a RAL correction.

Here, as in *Bishop Perry*, this minor error created no advantage for either St. Charles or Charter in processing their applications.⁷⁸ The factual record demonstrates that St. Charles continued to receive much needed service from Charter as a result of following the core

⁷⁶ *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Ann Arbor Public Schools, Ann Arbor, MI, et al.*, CC Docket No. 02-6, Order, DA 10-2354, 25 FCC Rcd 17319 (Wir. Comp. Bur. 2010), at ¶ 2.

⁷⁷ *Request for Review of a Decision of the Universal Service Administrator by Grand Rapids Public Schools, Grand Rapids, Michigan*, CC Docket No. 02-6, Order, DA 08-2364, 23 FCC Rcd 15413 (Wir. Comp. Bur. 2008), at ¶ 6; *see also id.* at ¶ 8 (“the public interest and goals of the Act are best served by allowing Grand Rapids to substitute the incorrect FCC Form 470 with the correct establishing FCC Form 470 on its amended FCC Form 471 application”).

⁷⁸ *Bishop Perry* at ¶ 11.

procedural rules by posting a Form 470, conducting a competitive bid process, filing the FCC Form 471 and Item 21 attachments, which clearly indicated a 1 Gbps WAN transport service, and awarding the contract to Charter. Charter was the only provider who responded to the FCC Form 470 both in FY 2013 and FY 2014. No other provider submitted any inquiry or provided any bid response in either FY 2013 or FY 2014, when the corrected FCC Form 470 was filed. The FY 2013 FCC Form 470 intended to seek 100 Mbps or more of Internet service, and the FY 2014 FCC Form 470 clearly sought 250 Mbps.

Furthermore, there is no claim or evidence of waste, fraud, and abuse. Rather, this is an unfortunate but fixable case, where an employee of the Consultant cited to the wrong FCC Form 470 over multiple funding years, and the error repeatedly went unnoticed by the School District, Consultant, service provider, and USAC staff alike.⁷⁹ Every 471 and Item 21 identified a 1 Gbps WAN transport service to the each of the School District's schools, and every Charter invoice that was reviewed and approved indicated a 1 Gig service. The issuance of COMADs in this case would create an undue hardship on a small School District that strove to be compliant in every aspect in working with its Consultant.

For the same reasons as discussed above, the Bureau should grant a waiver of the competitive bidding rules to permit it to correct its Form 471 filings for FY 2014-2017 and retain the funding previously committed and disbursed. In the *Archer Public Library Order*⁸⁰, the

⁷⁹ *Bishop Perry* at ¶ 23 (finding that USAC's initial assistance in helping applicants file correct and complete applications, should reduce the overall money spent on the fund due to fewer appeals).

⁸⁰ *Request for Review of the Decision of the Universal Service Administrator by Archer Public Library, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-140961, *et al.*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5318-21 (2006) (granting waivers permitting petitioners to correct clerical or ministerial errors in their FCC Forms 471

Commission waived its rules allowing modification to FCC Form 471 applications as a result of certain clerical or ministerial corrections. St. Charles seeks a similar waiver in this instance, because but for the Consultant citing to the incorrect Form 470 for Funding Years 2014 through 2017, St. Charles followed all of the core procedural and programmatic requirements. In FY 2014, the Consultant for St. Charles made a couple of RAL corrections, namely change of the service provider SPIN and category of service, because the Charter informed the Consultant that the FCC Form 471 contained the incorrect information. Regrettably, the incorrect FY 2013 Form 470 Application Number was not changed to the corrected FY 2014 FCC Form 471 Application Number.

While St. Charles and its Consultant erred in not citing to the correct FCC Form 470 for Funding Years 2014 through 2017, St. Charles, similar to the *Grand Rapids Order*, followed all of the core requirements in posting a Form 470 on USAC's web site, waiting 28 days to receive bids, of which there were none, before choosing Charter with whom it already entered into a multiyear contract in FY 2013.

or associated item 21 attachments) (*Archer Public Library Order*); see also *Request for Review of Decision of the Universal Service Administrator by Academy for Academic Excellence, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-539076, 539722, et al, CC Docket No. 02-6, Order 22 FCC Rcd 4747, 4748-49, para. 8 (Wireline Comp. Bur. 2007) (finding that an administrative deadline is not a substantive rule, but rather procedural in nature and, therefore, a complete rejection of an application is not warranted).

C. If the Commission Affirms Any COMAD at Issue in this Request for Review, It Should Direct USAC to Pursue Recovery from Charter

As set forth above, St. Charles respectively believes that the FY 2013 and FY 2014 Form 470 filings properly and adequately described the services it was seeking, as evidenced by the fact that Charter, the only service provider with network facilities in place to deliver the requested services, was able to submit an offer that correctly met the School District's needs. Nevertheless, if the Bureau should, for any reason, agree with USAC that the FY 2013 or FY 2014 Form 470 filing failed to adequately describe the services that St. Charles was seeking, then it should direct USAC to pursue recovery jointly against Charter, as an equally culpable party.

The Commission has directed USAC, in pursuing recovery, to "make the determination, in the first instance, to whom recovery should be directed in individual cases."⁸¹ In doing so, the Commission directed USAC to consider factors including which party was in better position to prevent the statutory or rule violation, and which party committed the act or omission that forms the basis for the statutory or rule violation.⁸² If the Bureau concludes, despite evidence to the contrary, that the FY 2013 or FY 2014 Form 470 filings failed to adequately describe the services that Charter offered in its bid, the facts and circumstances of this case indicate that both parties share responsibility.

⁸¹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Reconsideration and Fourth Report and Order, FCC 04-181, 19 FCC Rcd 15252 (2004) ("*Fourth Report and Order*"), at ¶ 15.

⁸² *Id.*

Conclusion

For the foregoing reasons, the Bureau should rescind the COMADs issued by USAC for Funding Years 2013 through 2016 and direct USAC to discontinue its efforts to recover the associated funding; and direct USAC to commit support for Funding Year 2017, which is based on the same establishing Form 470 at issue in this Request for Review. To the extent necessary to effectuate this relief, the Bureau should waive the competitive bidding and other rules contained in Part 54, Subpart F of the Commission's rules, 47 C.F.R. Part 54, Subpart F.

Should the Bureau uphold any of the COMADs at issue in this Request for Review, it should direct USAC to pursue recovery jointly against Charter, as an equally culpable party.

Respectfully submitted,



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cschultz@broadbandlawgroup.com

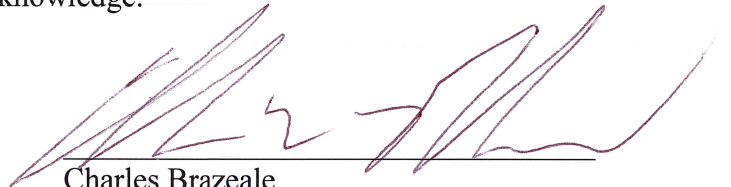
Counsel for City of St. Charles School District

March 22, 2018

AFFIDAVIT OF CHARLES BRAZEALE

I, Charles Brazeale, swear:

1. that I am Assistant Superintendent for Business and Technology (Chief Financial Officer) for the City of St. Charles School District. I have served in this capacity since 2012. I have been with the School District since 2010 and part of my responsibilities have included oversight of E-Rate administration. I have had more than 15 years of financial and operational management responsibility in the education sector. I hold a masters and bachelor degree in education and a doctorate degree in educational leadership.
2. that I have read the foregoing appeal and record and avow that the information therein is true and correct to the best of my knowledge.



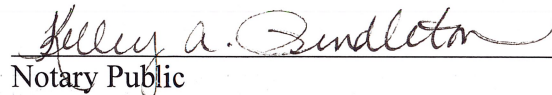
Charles Brazeale
Assistant Superintendent of Business
& Technology
City of St. Charles School District
400 N. Sixth Street
St. Charles, MO 63301

Subscribed and sworn to before me this 22 day of March, 2018

[Seal]



KELLEY A. PENDLETON
My Commission Expires
April 15, 2018
St. Charles County
Commission #14587382



Notary Public

CERTIFICATE OF SERVICE

This is to certify that on March 22, 2018, a true and correct copy of the Consolidated request for Review and Petition for Waiver was sent via e-mail to the Schools and Libraries Division of the Universal Administrative Company at appeals@sl.universalservice.org.

/s/ Cynthia B. Schultz